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File No. O. Lunacy/52

Legal Deptt

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Subject:— Opinions under the
Indian Lunacy Act, 1912

File No. O. Lunacy/52

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C O N T E N T S .

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3	<u>10688</u> <u>27-6-52</u>	<u>Re</u> The maintenance of lunatics ~~no~~ reception ~~orders~~ ~~were~~ made of any lunatic under Sec. 25 . and whether ~~therefor~~ the question of any order of the Court for the payment of cost of maintenance would not arise	7-9.
4.	<u>21071/A</u> <u>15-12-1952.</u>	Remarks of the Surgeon General that there is no provision to force a case of insanity by to enter a State ~~Lunatic~~ Mental Hospital ~~unless~~ taken by the Police ~~take~~ under proper care and control If the ~~presides~~ and ~~if~~ the relatives and friends so desires, they may ~~then~~ ~~the~~ ~~patient~~ privately and ~~by a~~ ~~psychiatrist~~ ~~heal the~~	

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Legal Department.

It appears that about 254 Military insanes were admitted in the Lunatic Asylum under reception orders passed by Magistrates upon petitions made by the military authorities. Some of these persons belong to this State and some to other States. The question raised for the R.L.A.'s consideration is whether the maintenance charges of these military insanes should be borne by the Military Department or whether this Government should bear the maintenance charges of all these military insanes or only of those who belong to this State.

Section 86(1) of the Indian Lunacy Act, 1912, (Act. IV of 1912) provides that when any lunatic is admitted to a licensed asylum under a reception order or an order under section 25, and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum. Sub-section (2) provides that the paymaster of the military circle within which any asylum is situated shall pay to the officer in charge of such asylum the cost of maintenance of every lunatic ^{received} ~~received~~ and detained therein under an order made under section 12. In the first place that section applies to European lunatic soldiers. In any case it does not appear that any of the military insanes was received or detained in the asylum under an order made under section 12. If so, sub-section (2) of section 86 will have no application. Under sub-section (1) of section 86, the maintenance charges will have to be borne by Government in cases where no engagement has been taken from the friends or relatives of the lunatics or no order made by the Court for the payment of

expenses by such friends and relatives. No such engagement *taken in respect of these lunatics and no order has been* has been made by the Court for the payment of expenses. Consequently, the Government of Bombay will have to bear the maintenance charges of all these lunatics even though some of them do not belong to this State. Army Regulation 436(7) at page 110 of the Regulations for the Medical Services of the Army in India, states 1937, XXXXX that when a reception order has been made by a magistrate for the reception of an individual into a mental hospital, the individual may either be handed over with the reception order to the Civil authorities for disposal or sent under military arrangements to the asylum or mental hospital to which he is to be admitted. Consequently, the military insanes who have been admitted under the reception order passed by the Magistrates in the present case would be deemed to have been handed over by the military authorities to the civil authorities and therefore the Military Department cannot be required to bear the maintenance charges in that behalf.

Id/-
Dt/- 10/1

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. , No. 302 , dated the 11th January 1952.

(Pl. see R.L.A.'s opinion No. 1067 dated the 27-6-52.)

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Payment of the cost of maintenance in respect of Lunatics under the Lunacy Act falls into two broad categories, (1) where the reception order is made at the instance of a private party and (2) where the reception order is made under sections 14, 15 and 17 in public interest. In respect of the first category, section 11(b) contemplates that a magistrate should take an engagement in writing to his satisfaction from the petitioner or some other person to pay the cost of maintenance of the lunatic. Under section 91(1) of the Act, the State Government can make rules for the purpose of generally carrying into effect the provisions of the Act. It would, therefore, be permissible to make a rule for the purpose of ensuring satisfaction of the magistrate regarding payment as required by clause (b) of section 11 and the rule may, therefore, provide a form of undertaking which should contain the express recital that the charges will be ^{recovered} as arrears of land revenue.

The second category is governed by sections 88 and 89 which contemplate an enquiry by the court into the question of whether any person is legally bound to maintain the lunatic or has the means of maintaining. It would not be expedient to change this procedure of enquiry. Since the enquiry is by court, it would also not be expedient to amend the Act for the purpose of making recovery, under the order, of the cost as arrears of land revenue. The procedure of executing the order as a decree should normally be found sufficient provided officers are diligent and take steps for its execution in time.

Id/- P.M.L.
dt/- 29/5/

Remembrancer of Legal Affairs.

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Section 26 (1) of the Indian Lunacy Act, 1912, provides that when any lunatic is admitted to a licensed asylum under a reception order or an order under section 25 and no engagement has been taken from the friends or relatives of the lunatic or order made by the Court for the payment of expenses under the provisions of this Act, the cost of maintenance of such lunatic shall, subject to the provision of any law for the time being in force, be paid by the Government to the person in charge of such asylum. Reception orders can be passed under the provisions of Chapter II. Reception order as defined in section 3(10) means an order made under the provisions of this Act for the reception into an asylum of a lunatic other than a lunatic so found by inquisition. Reception after inquisition can be made under section 25. Section 26(1) provides that when any lunatic has been admitted into an asylum in accordance with the provisions of section 25, the High Court or the District Court, as the case may be, shall, on the application of the person in charge of the asylum, make an order for the payment of the cost of maintenance of the lunatic in the asylum, and may from time to time direct that any sum of money payable under such order shall be recovered from the estate of the lunatic or of any person legally bound to maintain him. It is, therefore, apparent that "order made by the Court for the payment of ¹expenses under the provisions of this Act" in section 26(2) means an order made by the High Court or the District Court under section 26(1) regarding the payment of cost of maintenance of the lunatic received after inquisition. In the present case no reception order was made of any lunatic under section 25 and the question of any order of the court for payment of the cost of maintenance of such lunatic under section 26(1) would not arise. All the reception orders in the

present case appear to have been passed under section 7 and 10. If so, the Court could not pass any order regarding the payment of costs of maintenance of lunatics unless some persons engaged in writing to the satisfaction of the magistrate to pay such costs (see sections 11(b) and 11A of the Act.) It would, therefore, follow that there being no such engagement by any person in writing to pay the costs of maintenance of the lunatics, the orders passed by the magistrate requiring the military authorities to pay the cost of maintenance would not be binding on the military authorities and their silence even after such order could not be construed as impliedly agreeing to the payment of such costs as section 11(b) itself requires that the engagement must be in writing to the satisfaction of the magistrate to pay the costs of maintenance of the lunatic. In these circumstances, it appears that the military authorities cannot be required to bear the costs of maintenance of the lunatics notwithstanding the order of the magistrate. The proper course as suggested by the Secretary, P.D. is to bring to the notice of the magistrate that, while passing a reception order in respect of the lunatics produced by the military authorities, they should take an undertaking in writing from them to pay the cost of maintenance of such lunatics.

Id/- P.M.L.
dt/- 26/6/

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 10678 , dated 27th June 1952.

V.v.k. 16/6/56/

L.D.R.I No. 29203 dt. 4-12-1952.

If a person, whether a passenger or resident in Bombay, is found ~~that~~ to be a lunatic or suspected of lunacy, can he be legally confined in a public institution such as the Thana Mental Hospital or whether if so desired by his relatives, he would be detained in an approved private mental home or institution.

The Surgeon General with the Govt. of Bombay has stated in his report at p.5 ante that the Indian Lunacy Act and the Bombay Lunacy Rules do not contain any provision to force a case of insanity to enter State Mental Hospital unless the insane is taken charge of by the Police on account of his being a nuisance to the public and not under proper care and control of his friends or relatives. If the relatives of the patient so desire they may treat the patient privately by a psychiatrist. According to his information there are no approved private mental homes. The L.S.G. & P.H.D. has expressed concurrence with the remarks of the Surgeon General.

The Political and Services Department has sent the papers to the R.L.A. with a request to advise whether the view expressed by the Surgeon General is correct.

Reply may be :-

"Seen and returned, The view expressed by the Surgeon General and concurred in by the L.S.G. & P.H.D. is correct.

Attention is invited to sections 13, 14, 15 and 16 of the Indian Lunacy Act, 1912 which are relevant to the point at issue.

Id/-

dt/-11-12-52.

Id/-R.T.K.

dt/- 12/12/

Id/-P.W.L.

R.L.A. dt/- 12/12/

V.v.k. 16/6/56/ 5C.

U.O.R. to L.S.G. & P.H.D. No. 21071/Adt.dt.15/12/52